IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO.532 OF 2004
IN
WRIT PETITION NO. 589 OF 2004

Mrs.Salmma George Appellant

vs.

1. The State of Maharashtra & ors. Respondents

Mr.S.S. Lanke for the appellant.

Mr.Pradeep Jadhav, A.G.P. for the respondents 1 and 2.

CORAM : R. M. LODHA & J.P. DEVADHAR,JJ

DATED : 10th September 2004

P.C.

Admit.

2. Mr.Pradeep Jadhav, A.G.P. waives service for the respondents 1 and 2.

3. Looking to the nature of the order, we are satisfied that appeal deserves to be heard at this stage itself. Hence, we dispense with the printing of paper books and treat the appeal on board for hearing.

4. The impugned order dated 2nd August 2004 reads thus:

> "When the matter is called out Counsel holding for the petitioner requests that the matter be

kept back. Matter has been adjourned on several occasions. The challenge is to an order of remand. All the parties will have opportunity before the Authority. Even otherwise the order does not suffer from any error of jurisdiction. The Tribunal has proceeded on the footing that the respondent was not noticed before the order was passed. In the light of that no interference called for. Petition rejected."

5. An affidavit has been filed by Shri S.S.Lanke, advocate for the appellant before us stating therein thus:

"1. I say that I am representing the Appellant in the above Appeal filed by the Appellant, inter-alia, challenging the order and judgment dated 2-8-2004 passed by the learned Single Judge in Writ Petition No.589 of 2004. I say that the Writ Petition No.589 of 2004 was shown under the Caption "For Admission" on 2-8-2004 before His Lordship Justice Shri F.I. Rebello and was shown at serial No.4. I say that I am residing in Chembur, Bombay-400 089 at the above mentioned address and daily travelling by train from Chembur to Bombay V.T. On 2-8-2004, in the above matter my Junior Advocate, Mrs.Meenakshi Adate was present in the Court at 11.00 A.M. on 2-8-2004. When the matter was called out at 11.40 a.m. she requested His Lordship Justice, Shri F.I. Rebello to keep the matter back for some time as Shri S.S.Lanke on his way on 2-8-2004. There was heavy rain in Bombay on 2-8-2004 and Harbour line central Railway services were completely disrupted because of heavy rains. There were some trains running by 1 to 2 hours late. I reached the Chembur Railway station at 9.30 a.m. on 2-8-2004 to catch the Harbour line local. I came to know that the Harbour Line Central Railway locals were completely disrupted because of the heavy rains in Bombay on 2-8-2004. Some trains were running beyond schedule by 1 to 2 hours late. One train arrived at Chembur Railway Station at 9.50 a.m on 2-8-2004. I could not board in the First Class compartment which was heavily packed.

Thereafter, I telephoned my office that I would reach either by Taxi or bus hence I got Taxi at 10.10 a.m. on 2-8-2004 at Chembur. I reached on 2-8-2004 at 11.50 a.m. as the road condition was worst and there was heavy traffic jam. I say that the petition was called at 11.40 a.m. on 2-8-2004, at that time my junior Advocate Mrs.Meenakshi Adate was present in the Court. She communicated the Court the above difficulties and requested the Court to keep the matter back for some time as I was on my way. However, the learned Single Judge did not keep back the matter and passed the orders. If I would have reached in time, the matter would have been argued on merits and the Petition would have been admitted as the balance of convenience is in favour of the petitioner. I say that I am filing this Affidavit specifically in support of "Ground (b)" of the Memorandum of Appeal and also in order to place on record of this Hon'ble High Court that I could not reach in High Court on 2-8-2004 at 11.40 a.m. when the petition was called out, the same is due to the circumstances which was beyond my control.

2. I say that the petitioner has got a good case on merit and if I would have accorded an opportunity by the learned Single Judge, the petition would have been admitted by the learned Single Judge, I say that if the Appeal is not admitted then under such circumstances, greater prejudice and irreparable loss will be caused to the appellant. I pray that under the circumstance of the case and in the interest of justice, Appeal be admitted and reliefs sought by the Appellant be granted. I tender my apology for the inconvenience caused to the learned Single Judge."

6. Ground (b) of the memorandum of appeal reads thus:

"(b) The learned Single Judge erred in not considering that on 2-8-2004 the matter was shown on Board, under the Caption "PETITION FOR ADMISSION", at serial No.4 and since Advocate on record who stays at Chembur could not reach in High Court on 2-8-2004 when the matter was called out at 11.40 a.m. as the Junior Advocate of Shri S.S.Lanke who was present in the Court, requested the Court to

keep back the matter back for some time on 2-8-2004. There was heavy rain in Bombay and since all Harbour Line locals were running beyond schedule, due to heavy rain the Advocate on record could not reach in the Court when the matter was called out. The Junior Advocate of Shri S.S.Lanke Smt.Meenakshi Adate was present in the Court who requested the Court to keep back the matter as Shri S.S.Lanke was on his way to reach High Court. But the learned Single Judge refused to keep back the matter on the grounds that several adjournments were granted in the petition and on this ground only refused to keep back the matter and rejected the request of the Junior Advocate of Shri S.S.Lanke, and rejected the petition. As a matter of fact, the Respondent No.3 claiming to be the Landlord and the Advocate of Respondent No.3, Shri V.E.Pereira sought adjournments on previous dates on the grounds that the matter is being settled outside the Court and hence matter was shown on board in the caption "For settlement" on 4/5/2004 and on 26-7-2004, and the same was again shown in the caption "For settlement" before Justice Rebello and on 26-7-2004. The Respondent No.3 and her Advocate were absent on 26-7-2004 and hence the matter was argued and shown for admission on 2-8-2004. On 2-8-2004 in Bombay, there were incessant rains and train services were completely disturbed in Bombay due to water logging and train services were completely suspended and hence the advocate on record, could not remain present in the Court on 2-8-2004 at 11.40 a.m. when the matter was called out. However, junior Advocate of Shri S.S.Lanke was present, who requested the Court to keep back the matter for some time as Mr.S.S.Lanke was on his way and likely to reach shortly. But the learned single judge refused to keep back the matter and the said order of rejection was passed which is not on merits."

7. Ground (b) set out in the memorandum of appeal is duly supported by the affidavit of Shri S.S.Lanke, advocate. It, thus, appears that the advocate for the petitioner (appellant herein) was prevented by

sufficient cause in appearing before the Court at the time the case was called out for admission by the learned single judge on 2-8-2004. For want of absence of the advocate for the petitioner no arguments could be advanced on his behalf. The observation made by the learned Single Judge that the order of the Tribunal does not suffer from jurisdiction is without hearing the petitioner.

8. In our considered view, an opportunity deserves to be given to the petitioner to address the learned single judge for admission of the writ petition.

9. The learned Assistant Government Pleader has left the matter to the Court.

10. We, accordingly, allow the appeal and set aside the order dated 2nd August 2004. Writ Petition No.589 of 2004 is restored to file and is ordered to be placed before the learned single Judge taking up such matters for admission.

11. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)